

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

filed with the

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT
CASE TYPE: SUPPORT

In Re the Marriage of:
Lana Susan Higgins,

Petitioner,

and

Warren Nau Higgins, Jr.,

Respondent.

**ORDER DENYING
MOTION FOR A STAY**

**District Ct. File No. PF3-93-14712
Court of Appeals File No. C8-97-739**

The above-captioned matter came on before Administrative Law Judge George A. Beck on remand from the Court of Appeals for the purpose of determining whether a stay of the suspension of the Respondent's driver's license is appropriate pending appeal.

Warren Nau Higgins, Jr. represented himself. James M. Crow, Assistant County Attorney, represented Dakota County Financial Services. Mark A. Carter, Esq., represented Lana Susan Higgins.

Written submissions were accepted from the parties through July 8, 1997.

Based upon the written submissions and the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent is a self-employed insurance broker and has no salaried income. He earns commissions based upon his sales.
2. The Respondent's Minnesota driver's license was suspended effective February 14, 1997, as the result of an Order of Administrative Law Judge Suzanne Born dated January 9, 1997.
3. The January 9, 1997 Order found that the Respondent had an arrearage of court-ordered child support payments in an amount equal to or greater than three times

the Respondent's total monthly support payment and that the Respondent had not executed and was not in compliance with a written payment agreement regarding both current support and arrearage.

4. The January 9, 1997 Order found that the Respondent's arrearage of court-ordered child support as of December 31, 1996, was \$8,263.43. As of the date of the Order, Respondent's child support obligation was \$490 per month and a child care contribution of \$50 per month.

5. The January 9, 1997 Order is the subject of this appeal.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. § 518.551, subd. 13, which requires the suspension of a driver's license where an obligor is in arrears in court-ordered child support.

2. Minn. Rule Civ. Proc. 62 authorizes a trial court to stay an Order upon its appeal. Herr & Haydeck, *Minnesota Practice*, § 62.8.

3. Under Minn. Rule Civ. Proc. 62.03, an appellant granted a stay must comply with the Rules of Civil Appellate Procedure 107 and 108 which provide for cost bonds and supersedeas bonds.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

1. Respondent's motion for a stay of the suspension of his drivers license pending appeal is denied.

2. A copy of this Determination and Recommendation shall be served upon the parties by mail at the following addresses:

Warren Nau Higgins, Jr.
3840 Ballantrae Road, #10
Eagan, Minnesota 55122

James M. Crow
Assistant County Attorney
Dakota County Judicial Center
Hastings, Minnesota 55033

Mark A. Carter, Esq.
33 South 10th Avenue, Suite 110
Hopkins, Minnesota 55343

Dated this 9th day of July 1997.

GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

The Respondent has moved for a stay of the January 9, 1997 Order pending its appeal. The June 25, 1997 Order of the Court of Appeals remanded the Respondent's motion for a stay to the Administrative Law Judge. Under Minn. Rule Civ. Proc. 62, the trial court may stay proceedings upon appeal. ***David W. Volkman Const. v. Issacs***, 428 N.W.2d 875, 876 (Minn. App. 1988). The Petitioner argues that a stay would undermine the legislative intent in allowing suspension of driving privileges for a failure to pay child support. She argues that the Respondent has not alleged a good faith attempt to comply with Minn. Stat. § 518.551, subd. 13, nor does he allege that he is not in arrears. She asserts that the statute requiring license suspension is a remedy designed for a situation like this where the Obligor is self-employed and withholding is not possible. Dakota County also opposes a stay and suggests there are other forms of transportation available to the Respondent.

The Respondent argues that he cannot pay child support and has been denied due process in this proceeding. Those assertions are contrary to the determination of the Judges who have considered that argument. He also suggests that this statute impermissably links child support and visitation. However, the legislature passed both the driver's license suspension statute and the statute providing that support and visitation may not be linked. The laws are reconcilable since the point of the latter statute is to ensure that support is paid even though problems exist with visitation.

The statute authorizing suspension of a driver's license is mandatory and does not leave discretion to the Administrative Law Judge. (Conclusion No. 1). This indicates the legislature's intent to deal with the failure to pay child support in a firm manner. In the context of this statute, it would be appropriate to stay the Order only where the Respondent provides some reasonable argument or indication that the Order may be reversed. Otherwise, the legislative intent would be defeated. The Respondent makes no argument that a mistake has been made as to the existence of the child support arrearage or as to its amount. The Respondent argues that his ability to get to work and to have visitation have been adversely affected and that the legislature could not have intended that result. However, this possibility must have been foreseen by the legislature and is not a sufficient showing to justify a stay. The Respondent can, of course, regain his driving privileges by entering into a payment agreement to address the arrearages, an opportunity he also had prior to the hearing in this matter.

G.A.B.